IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

Bail Appl..No. 5241 of 2007()

CR.NO.22 OF 2007 OF THE KARTHIKAPPALLY EXCISE RANGE

: PETITIONER/ACCUSED:

UMAYAMMA,
NARANGAMURI VEETTIL, NALLANIMURIYIL,ARATTUPUZHA.

BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No. 5241 of 2007

Dated this the 4th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner, a woman, faces allegations under the Kerala Abkari Act. She was allegedly found to be in possession of 200 litres of wash on 28.02.07 when the excise party recovered the said quantity of contraband article from the possession of the petitioner. The petitioner was physically present, but could not be arrested as the excise party which effected the seizure did not consist of any woman official. Investigation is in progress. The petitioner apprehends that she may be arrested at any moment. She prays that anticipatory bail may be granted to the petitioner.

2. The application is opposed by the learned Public Prosecutor . He submits that there are no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The investigators had no mala fide motives against the petitioner as can be ascertained from the admitted conduct that the petitioner was not arrested at the time of interception. The petitioner must resort to the ordinary and normal procedure of appearing before the learned Magistrate having jurisdiction or the Investigating Officer, submits the learned Public Prosecutor .

3. I find merit in the opposition by the learned Public Prosecutor . I am not persuaded to agree that there exist any such circumstances in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is a fit case where the petitioner must appear before the investigator or the learned Magistrate having jurisdiction and then seek regular bail.

4. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-